(6)

Supreme Court, U.S.
FILED
APR 4 1996
CLERK

No. 95-1249

IN THE UNITED STATES SUPREME COURT
OCTOBER TERM, 1995

LAWTON M. CHILES, JR., *et al.*, *Petitioners,*

vs.

THE UNITED STATES OF AMERICA, *et al.*,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals, Eleventh Circuit

BRIEF OF *AMICUS CURIAE* STATE OF TEXAS IN SUPPORT OF FLORIDA'S PETITION FOR WRIT OF CERTIORARI

DAN MORALES
Attorney General of Texas
JORGE VEGA
First Assistant Attorney General
JAVIER AGUILAR
Special Assistant Attorney General
DEBORAH A. VERBIL
Assistant Attorney General
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2191
Fax: (512) 463-2063

April 1996 ATTORNEYS FOR AMICUS CURIAE

12 pp

TABLE OF CONTENTS

Page(s)

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

I. Interest of Amicus 1

II. Reasons for Granting the Writ 1

A. Texas and its political subdivisions pay the costs of federal immigration policies 1

B. Florida's claims raise important issues regarding state sovereignty and the structure of federalism under the Tenth Amendment and the Guarantee Clause... 6

C. This Court's recent decision in *Seminole Tribe v. Florida* affirms the importance of Florida's claims regarding the structure of federalism 7

III. Conclusion 8

TABLE OF AUTHORITIES

Cases — *Page(s)*

Plyler v. Doe, 457 U.S. 202 (1982) 6

Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc., 506 U.S. 139 (1993) 8

Seminole Tribe v. Florida, No. 94-12, 1996 WL 134309 (U.S. March 27, 1996) 7

Texas v. United States, No. 95-40721 (5th Cir. Sept. 15, 1995) 1

Statutes

5 U.S.C. § 701 *et seq.* 7

8 U.S.C. § 1101 2

8 U.S.C. § 1324a 2

Miscellaneous

REBECCA L. CLARK, ET AL., FISCAL IMPACTS OF UNDOCUMENTED ALIENTS: SELECTED ESTIMATES FOR SEVEN STATES (1994) 2

JEFFREY S. PASSEL, IMMIGRANTS AND TAXES: A REAPPRAISAL OF HUDDLE'S "THE COST OF IMMIGRANTS," (The Urgan Institute, January 1994) 5

Brief of Amicus Curiae State of Texas In Support of Florida's Petition for Writ of Certiorari

I. Interest of Amicus

In 1993, the State of Texas, along with Texas cities, counties, school districts, and hospital districts, spent approximately $1,340,603,717 in providing health, education, and criminal justice services to illegal immigrants. The state and its political subdivisions have spent similar amounts since 1988.

Like Florida, Texas has tried, but has been unable, to obtain relief through the political process. And, like Florida, Texas has turned to the courts for help. Texas' case was dismissed by the district court and is now pending before the U.S. Fifth Circuit Court of Appeals. *See Texas v. United States*, No. B-94-228 (S.D. Tex. Aug. 7, 1995), *appeal docketed,* No. 95-40721 (5th Cir. Sept. 15, 1995). Because Florida's claims present similar issues regarding the structure of federalism and a state's ability to enforce the guarantees of state sovereignty in federal court, Texas supports Florida's petition for writ of certiorari.

II. Reasons for Granting the Writ

A. Texas and its political subdivisions pay the costs of federal immigration policies.

Texas acknowledges the positive long-run economic and social contributions that immigrants have made, and will continue to make, to the United States and Texas. These long-run

contributions, however, come at a considerable price in the short run: a price paid by Texas.

Despite the efforts of the United States Congress to control immigration by enacting extensive immigration legislation in 1986[1] and 1990[2], undocumented immigrants continue to enter and to reside in Texas.[3] Texas and its political subdivisions must provide health services, primary and secondary education, and correctional resources to satisfy their obligations to provide for the health, safety, and welfare of their residents.

The United States has consistently acknowledged its constitutional duty to control illegal immigration, as well as its failure to do so. In 1994, the United States House of Representatives passed the following concurrent resolution:

> The Congress finds that
>
> (a) the Federal Government is solely responsible for setting and enforcing national immigration policy;
>
> (1) the Federal Government has not adequately enforced immigration laws;

---

[1] Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a (1970 & Supp. 1996).

[2] Immigration and Naturalization Act, 8 U.S.C. § 1101 (1970 & Supp. 1996).

[3] In addition to Texas, the other states most affected by immigration are Florida, California, New York, New Jersey, Illinois, and Arizona. *See* REBECCA L. CLARK, ET AL., FISCAL IMPACTS OF UNDOCUMENTED ALIENS: SELECTED ESTIMATES FOR SEVEN STATES (1994).

(2) this weak enforcement has imposed financial costs on State and local governments;

(3) States must incur costs for incarcerating undocumented persons convicted of State and local crimes, educating undocumented children, providing emergency medical services to undocumented persons, and providing services incidental to admission of refugees under the Refugee Admissions and Resettlement Program; and

(4) the Federal Government has an obligation to reimburse State and local governments for costs resulting from the costs described in paragraph (3).[4]

Moreover, the Second Report of the United States House of Representatives Committee on Government Operations[5] observes:

> Unfortunately, INS has not done a good job (in controlling illegal immigration). As reflected in this report, people are unhappy with the quality of

---

[4] H. Con. Res. 218, 103d Cong., 2d Sess., 140 CONG. REC. 1210 (1994) (Sec. 35), (entitled "Concurrent resolution setting forth the congressional budget for the United States Government for the fiscal years 1995, 1996, 1997, 1998, 1999).

[5] House Comm. On Government Operations, The Immigration and Naturalization Service: Overwhelmed and Unprepared for the Future, H.R. Doc. No. 216, 103d Cong., 1st Sess. 2-3 (1993).

> both the enforcement and service functions performed by the agency. In addition, in recent years, government auditors have issued numerous reports identifying management inefficiencies throughout the INS. Their findings have been so consistently negative and the problems so pervasive that in the 1992 Department of Justice annual report..., the (INS) was identified as the Department's No. 1 "high risk" area.
>
> In States and localities most affected by immigration, the presence of undocumented immigrants has placed growing burdens on service delivery systems--health care, education, and public protection. Their citizens recognize the consequences of the failure of INS to stem the flow of illegal immigration.

In January 1994, the Department of Justice admitted that its enforcement to prevent the flood of undocumented immigrants was "weak" when it requested $540 million in additional funding for its "strategy to control the border" to "stop the revolving door."[6]

Between FY90 and FY93 the U.S. Border Patrol reported the apprehension of 1,914,778 undocumented persons in Texas who had "entered without inspection."[7] INS estimates that two undocumented immigrants evade interdiction for every undocumented alien apprehended. INS further estimates that

---

[6] Ana Cobiar, U.S. Immigration and Naturalization Service spokesperson, FY 1995 Immigration Initiative (press release).

[7] BORDER PATROL, IMMIGRATION AND NATURALIZATION SERVICE, DEPORTABLE ALIENS & OTM'S, TEXAS BORDER SECTORS - FY 90 TO FY 93.

only half of the undocumented immigrants residing in the United States enter by slipping across the border; the other half of the undocumented immigrants reside in the United States in violation of their visas.

In addition, the federal government's immigration policy benefits the federal government because it receives substantial federal tax revenues from the undocumented immigrants. According to a recent study[8], undocumented immigrants residing in Texas pay the following amounts in federal taxes annually:

Federal Income Tax	$58,850,000
Federal Excise Tax	20, 900,000
FICA	311,850,000
Federal Gasoline Tax	17,600,000
TOTAL	$409,200,000

Thus, the federal government benefits not only by collecting taxes but also by refusing to take responsibility for the financial consequences of federal immigration policy.

Texas and its political subdivisions expended approximately $534 million in 1993 in providing human services benefits to undocumented immigrants in order to preserve and protect the public health and welfare. Similar yearly costs have been incurred since 1988.

In addition, illegal immigration has substantially increased the cost of criminal justice to Texas, including the cost to law enforcement, to the judiciary, and to the penal system. The

---

[8] JEFFREY S. PASSEL, IMMIGRANTS AND TAXES: A REAPPRAISAL OF HUDDLE'S "THE COST OF IMMIGRANTS," (The Urban Institute, January 1994).

financial consequences of federal immigration policy on these criminal justice areas cost Texas and its political subdivisions approximately $183 million in 1993. Similar yearly costs have been incurred since 1988.

Finally, the state must provide free education to illegal immigrants of school age. *Plyler v. Doe*, 457 U.S. 202, 102 S.Ct. 2382 (1982).[9] The financial consequences of federal immigration policy cost Texas approximately $624 million in 1993. Similar yearly costs have been incurred since 1988.

B. Florida's claims raise important issues regarding state sovereignty and the structure of federalism under the Tenth Amendment and the Guarantee Clause.

Texas concurs with Petitioner Florida and the Amici States, including California, that this case presents important issues regarding the structure of federalism and the availability

---

[9] In *Plyler*, the Supreme Court noted the unfairness of the federal government's imposing the costs of educating the children of illegal immigrants on state and local governments:

> It does not follow, however, that a state should bear the costs of educating children whose illegal presence in this country results from the default of the political branches of the Federal Government. A state has no power to prevent unlawful immigration, and no power to deport illegal aliens; those powers are reserved exclusively to Congress and the Executive. If the Federal Government, properly chargeable with deporting illegal aliens, fails to do so, it should bear the burdens of their presence here.

Id. at 2408 (Burger, C.J., dissenting).

of judicial review. Texas agrees that the political question doctrine does not bar this action. Texas further agrees that Florida's claims under the Guarantee Clause, the Tenth Amendment, and the Administrative Procedures Act, 5 U.S.C. §§ 701 *et seq.*, merit consideration by this Court.

In the interest of brevity, Texas will not repeat those arguments, but joins in the arguments presented by both Petitioner and the other Amici. Texas points out, however, that it has not asserted a claim under the Invasion Clause of Art. IV, § 4, in its suit. For that reason, it does not join in Florida's and the Amici's arguments regarding the applicability of that provision.[10]

C. This Court's recent decision in *Seminole Tribe v. Florida* affirms the importance of Florida's claims regarding the structure of federalism.

In *Seminole Tribe v. Florida*, No. 94-12, 1996 WL 134309 (U. S. March 27, 1996), this Court again emphasized that

---

[10] Texas' claims differ from Florida's in two significant respects. First, Texas' claims are grounded in the federal government's exclusive power to control immigration granted by Article I, section 8 of the U.S. Constitution (the "Naturalization Clause").

Texas alleges that the Naturalization Clause imposes on the federal government a constitutional duty to pay for the consequences of federal immigration policies, regardless of what those policies are, and regardless of the level at which the federal government chooses to enforce those policies.

Second, Texas' suit does not allege a violation of the "invasion" clause. Texas believes that the federal government is responsible for all the costs of its immigration policies, regardless of whether immigration is legal or illegal.

"each State is a sovereign entity in our federal system." *Id.* at *4.

Seminole dealt with the states' immunity from suit under the Eleventh Amendment. In holding that the Eleventh Amendment limits federal courts' jurisdiction under Article III, the Court noted that "(t)he [Eleventh] Amendment is rooted in a recognition that the States, although a union, maintain certain attributes of sovereignty, including sovereign immunity." *Id.* at *4, *citing Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993).

Florida's claims bring another aspect of state sovereignty to this Court's attention, *i.e.*, a state's right, protected by the Tenth Amendment and the Guarantee Clause, to be free from coercion by the federal government. Because this issue is of fundamental importance to Texas, as well as other states disproportionately affected by federal immigration policies, Texas urges this Court to grant certiorari in this case.

III: Conclusion

For the reasons stated, Amicus, the State of Texas, asks this Court to grant Florida's petition for writ of certiorari.

Respectfully submitted,

DAN MORALES
Attorney General of Texas
JORGE VEGA
First Assistant Attorney General
JAVIER AGUILAR
Special Assistant Attorney General
DEBORAH A. VERBIL
Assistant Attorney General
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2191
Fax: (512) 463-2063

April 1996

ATTORNEYS FOR AMICUS CURIAE